

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

TASHA SHERMAN-HARRIS-
GOLSON,

Plaintiff,

-vs-

FOREST PARK MUNICIPAL
AUTHORITY, TOWN OF FOREST
PARK, ex rel. FOREST PARK
POLICE DEPARTMENT, TYARA
NASH-RICHMOND, THOMAS
GIPSON, JOSEPH MILTON,

Defendants.

Case No. CIV-21-466-F

ORDER

The court is in the process of reviewing the parties' submissions with respect to the Motion for Summary Judgment of Defendant Town of Forest Park (doc. no. 71) and Defendant Joseph Milton's Motion for Summary Judgment (doc. no. 73). With their replies, defendants have submitted new evidentiary materials and made new arguments based on those new evidentiary materials to support the entry of summary judgment in their favor.

See, Reply to Plaintiff's Response to Motion for Summary Judgment of Forest Park (doc. no. 112) –

Ex. 1, p. 69, ll. 12-21, and Ex. 2, Forest Park 0445-0447, at ECF p. 9 as to Fact 7;

Ex. 5, p. 50, ll. 5-12, at ECF p. 10 as to Fact 1, 12;

Ex. 6, p. 326, ll. 17-20, at ECF p. 12 as to Fact 21;

Ex. 7 at 7:28-9:30, at ECF p. 13 at to Fact 23;

Ex. 8, p. 152, ll. 3-25 at ECF p. 14 as to Fact 28, 49;

Ex. 10, at 8:52-10:02, 1:27-3:35, at ECF p. 15 as to Fact 37;

Ex. 6, p. 311, l. 24 through p. 312, l. 3, at ECF p. 17 as to Fact 44;

Ex. 8, p. 93, ll. 1-4, and Ex. 1, p. 37, l. 24 through p. 38, l. 8, at ECF p. 19 as to Fact 65 and argument on ECF p. 22; and

Ex. 1, p. 63, l. 15, and p. 26, ll. 22-25, at ECF p. 19 as to Fact, 68, 69, 70, and Ex. 1, p. 25, ll. 3-24, p. 26, l. 22 through p. 27, l. 1, p. 63, ll. 12-15, and argument at ECF p. 21.

See also, Defendant Joseph Milton’s Reply (doc. no. 114) – Ex. 1 at ECF p. 6, ¶ 38, and new arguments at ECF pp. 2, 3, and 9.

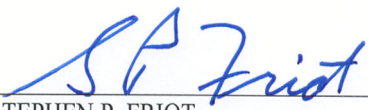
In the Tenth Circuit, a district court abuses its discretion if it relies “on new evidentiary materials or new arguments presented in a reply brief without permitting the nonmoving party an opportunity to respond[.]” Otten v. BNSF Railway Company, No. 22-8025, 2023 WL 1948626, at *4 (10th Cir. Feb. 13, 2023) (citing Doebele v. Sprint/United Mgmt. Co., 342 F.3d 1117, 1139 n. 13 (10th Cir. 2003)).

Assuming without deciding that the court will rely upon the new evidentiary materials and new arguments proffered by defendants, the court concludes that plaintiff should be given an opportunity to respond to the new evidentiary materials and new arguments.

Accordingly, plaintiff Tasha Sherman-Harris-Golson is **GRANTED** leave to file a sur-reply to each of the defendants’ replies addressing the new evidentiary materials and new arguments. Any sur-reply shall not exceed 10 pages in length and shall be filed **no later than noon on November 21, 2023**.

The deadline for filing all trial submissions (final pretrial report, motions in limine, requested jury instructions and proposed verdict forms, requested voir dire and trial briefs) is extended until December 22, 2023. Any objections or responses to motions in limine, requested jury instructions and proposed verdict forms, requested voir dire and trial briefs are due on January 2, 2024.

IT IS SO ORDERED this 9th day of November, 2023.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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